

In The United States Patent and Trademark Office

Appl. No.:	10/627,166	Confirmation No.:	2507
Applicant(s):	Charles E. Price	Filed:	July 25, 2003
Art Unit:	1755	Examiner:	Paul D. Marcantoni
Title:	CEMENTITIOUS COMPOSITIONS AND METHODS OF MAKING AND USING		

Docket No.: 946478-263692

Customer No.: 24239

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P.O. Box 1450
Alexandria, VA 22313-1450

**REQUEST FOR RECONSIDERATION OF DISMISSAL OF APPEAL AND HOLDING OF
ABANDONMENT OF APPLICATION**

Pursuant to M.P.E.P. § 711.03(b), Applicant in the above-identified patent application hereby requests reconsideration of the dismissal of the appeal and the holding of abandonment of the application, as set forth in the office communication dated July 28, 2009, on the basis that the appeal was timely filed and there was no abandonment in fact.

In the office communication dated July 28, 2009, the Examiner asserted that the appeal brief filed June 24, 2009 was not timely filed as it was not filed within six (6) months of the date of Applicant's Notice of Appeal as required by 35 U.S.C. § 133. For this reason, the communication indicated that the appeal was dismissed and the application was abandoned.

Applicant timely filed the Notice of Appeal on November 24, 2008. 37 CFR 41.37(a) requires that an appeal brief be filed within two (2) months from the date of filing the notice of appeal. However, M.P.E.P. § 710.02(d) explains that the two-month time period for filing an appeal brief is not a (shortened) statutory period for reply subject to the six-month maximum response time set forth in 35 U.S.C. § 133, and that the two-month period is extendable by up to five (5) months under 37 CFR 1.136(a). Therefore, the filing of Applicant's appeal brief on June 24, 2009 with a five-month extension of time was in fact timely, and Applicant respectfully requests that the Examiner withdraw the dismissal of the appeal and the holding that the application is abandoned.

Respectfully submitted,

/hbw/

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